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October 4, 2005

By Facsimile and First-Class Mail

The Honorable Bernard J. Fried
New York Supreme Court
New York County
111 Centre Street
Room 457
New York, NY 10013

FILED
OCT 11 2005
NEW YORK
COUNTY CLERK'S OFFICE


Re: Philip Nelson Burns, et al. v. Grupo Mexico, S.A. de C.V., et al.
Index No. 04/114728

Dear Justice Fried:

We represent certain defendants in the above case. The Court has scheduled a pre-trial conference for Friday, October 7, 2005. On August 9, 2005, ASARCO Inc., the owner of the assets that are the subject of plaintiffs' claim of fraudulent transfer, filed a Petition in Bankruptcy in the U.S. Bankruptcy Court of the Southern District of Texas. On September 19, 2005 Asarco's bankruptcy counsel, Baker & Botts LLP, sent a letter to plaintiffs' counsel in this case advising them that this action was subject to the automatic stay provisions of the Bankruptcy Code. (A copy of that letter is attached hereto.)

We respectfully suggest that in view of this development, the October 7th conference be vacated and rescheduled only if and when a determination is made by the Bankruptcy Court that this case is not subject to the automatic stay.

Respectfully yours,


Roger J. Hawke

Attachment

SIDLEY AUSTIN BROWN & WOOD LLP

NEW YORK

The Honorable Bernard J. Fried
October 4, 2005
Page 2

cc by facsimile and first-class mail:

John M. Broaddus, Esq.
Alan B. Rich, Esq.
David R. Lurie, Esq.
James A. Beha II, Esq.
Leo V. Gagon, Esq.

FILED
10/11/05
COUNTY CLERK
NEW YORK COUNTY

264815

AT THE COUNTY CLERK
OFFICE OF SAN DIEGO COUNTY, CALIFORNIA
ON JANUARY 26, 2007, I, THE
COUNTY CLERK, RECEIVED
FROM THE DISTRICT CLERK
OF THE DISTRICT COURT OF
SOUTHERN DISTRICT
OF NEW YORK CERTIFY ON

FEB. 27. 2007

THAT I HAVE COMPARED THIS
COPY WITH THE ORIGINAL
FILED IN MY OFFICE ON

10/11/05

AND THAT IT IS A TRUE
AND CORRECT COPY OF THE
ORIGINAL AS THE SAME
WAS FILED IN MY OFFICE
ON OCTOBER 11, 2005.
IN WITNESS WHEREOF, I
HEREBY SET MY HAND AND
AFFIXED MY SEAL.

[Signature]
COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA

PAID

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September 19, 2005

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FILED
OCT 11 2005
NEW YORK
COUNTY OF NEW YORK

Re: *Burns v. Grupo Mexico et al., Index No. 04/114728*

Gentlemen:

As you may be aware, ASARCO LLC ("Asarco") filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court of the Southern District of Texas (the "Bankruptcy Court") on August 9, 2005. We have examined the complaint you filed on this action and have concluded that most, and probably all, of the causes of action asserted in the complaint are properties of Asarco's estate and that continued prosecution of the same is therefore stayed by the automatic stay of 11 USC §362.

We would, however, refer you to a motions recently filed by Robert C. Pate, and Sandy Esserman in Adversary Proceeding No. 05-02048 pending in Asarco's bankruptcy case. Mr. Pate is the Future Claim Representative in the bankruptcy cases of certain of Asarco's subsidiaries and Mr. Esserman is counsel to the creditors' committee in the ASARCO subsidiary asbestos cases. These motions seek, among other things, authority to prosecute essentially the same causes of action that are asserted in your complaint. We would urge you to consider whether, as we believe, the causes of action contained in your complaint and referred to in Mr. Pate's and Mr. Esserman's motions are best addressed in the bankruptcy proceeding where the Bankruptcy Court can decide who the proper parties are to prosecute such claims.

If you have any questions or wish to discuss this matter further, please contact me.

Yours very truly,

Jack L. Kinzie

cc: Ms. Karen C. Paul
Mr. Tony M. Davis
Mr. Paul M. Singer
Mr. Sander L. Esserman
Mr. Robert C. Pate

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BERNARD J. FRIED**
J.S.C.
Justice

PART 60

BURNS, PHILIP NELSON

INDEX NO. # 114728/04

- v -
Grupo Mexico S.A.

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

This action is stayed because of a Bankruptcy proceeding in the
United States Bankruptcy Court for the Southern District of Texas.

SO ORDERED

Dated: 10/7/05

264820

FEB 27 2007

THIS DOCUMENT CONTAINS
COPY WITH THE CLERK
FILED IN MY OFFICE

10/11/05

OCT 11 2005

NEW YORK
COUNTY CLERK'S OFFICE

BERNARD J. FRIED
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):